

# Gazette of the United States.

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WEDNESDAY, JUNE 26, 1793.

[Whole No. 434.]

### LAW CASE.

Robert Findley, jun. and others, }  
Ship William. } Libel filed.

Sketch of the Pleadings in this important case, continued.

JUNE 14th, P. M.

MR. RAWLE, as counsel for the libellants rose. He said a few words on the importance of the cause. He next remarked, that America had received essential assistance from France, in a most important moment, and owed to that assistance, in a great measure her liberty and actual consequent prosperity, she can but be grateful; but he observed, a judge always decides on the merits of a cause abstractedly, the situation of parties have no influence upon his decision. The question is not in the present instance to avoid or dispute the obligation of a treaty but to see whether the present case applied to any of the provisions of the treaty.

He read the libel, the plea and replication, the substance of which we have stated at the head of this argument, to explain on what ground the present controversy rests. The plea he observed admits the facts in the libel to be true, it was only contended that the court could not maintain the present suit. He hoped to be able to establish, that the suit could properly be brought before this court, agreeably to the law of nations and not contrary to treaties.

He laid down the following points.

1. That every sovereign nation may vindicate a wrong done to itself;
2. That in the present case a wrong is done to this nation;
3. That it may be vindicated by the nation.

His next object would be to shew.

1. That this vindication may be effected several ways; one of which by the interposition of the judicial authority of the neutral and injured country.

That this judicial interposition is lawful unless prohibited by express treaty and that no treaties to prevent it now exist.

To begin by the first position. He should take no time to shew that the United States are a sovereign nation. By the law of nations self preservation is the duty of every sovereign, the right to protect itself from injury is a necessary consequence flowing from that duty. To prove this point he cited the following authorities: 1. Vattel, ch. 2. sec. 16; 2. Vattel, ch. 4. sec. 49; also ch. 5. sec. 65, 66. Other authorities could be brought but these will suffice.

He next went to the second point, and first mentioned that we have treaties of amity and commerce with Spain and Holland, and though unconnected in this respect with Great Britain, yet we are in a state of neutrality as relates to them, and consequently bound by the law of nations not to injure them. As a neutral nation we ought to behave impartially towards belligerent powers as far as consistent with existing treaties. He laid it down as a general rule, that the territory within the jurisdiction of a neutral country should afford a safe asylum to all belligerent powers.

3. Vattel, Sec. 102 gives an instance in point. The Dutch fleet were driven into Bergen by the English and attacked upon the carriage of the fleet. The commander of the forts in violation of the right of neutrality, thus violated, fired on the English fleet, and the proceeding was certainly justifiable by the principles of the law of nations.

Vattel says, that prizes may be brought into neutral ports; but not taken within neutral jurisdiction as that tends to involve the country.—Lee ch. 9 page 121 and 2 Woodson page 443, say, that vessels cannot lawfully be captured in neutral ports or places, or within cannon-shot of forts.

For this right of neutral nations we are not indebted to treaties, the right is prior to treaties, essential to the existence of sovereign nations and derived from the inherent duty of preservation, it is of the highest importance and should be jealously preserved from infringement.—It had been said on the part of the captors, by Mr. Duponceau, in the present case, that the commissions to French privateers were general, and that if they were restricted this was by private instructions. They could, he answered, cruise only where the law of nations declared it lawful to cruise. If the French had given authority to their privateers to cruise on neutral territory, the act is an absolute declaration of war; if no such power is given it is a trespass on the part of the privateer. If power was given, and it is to be considered as a declaration of war, then the capture and captor may be seized by virtue of the laws of war; if it be a trespass on the part of the privateer, the privateer is subject to the laws of the country for the offence.

It next remains to be determined how far the jurisdiction of a maritime country extends at sea. It is going too far to say with M. Mitchell, in the case cited in the morning,

that the vessel belonging to a neutral country is to be considered as a part of the territory of that country; but to some distance at sea a nation has certainly jurisdiction. Lee 122 says, that a King of Spain had arbitrarily fixed this distance to be within sight of land; but Bynkerhook settled it, and Lee agrees with him, that the jurisdiction at sea extends so far as the power of arms from the land can make it respected. 1 Vattel s. 289, agrees, that a nation can claim jurisdiction so far from her shore as she can make her claim respected, or so far as necessary for her safety.—within cannon shot, and for this reason a vessel taken under the cannon of a fortress is not a lawful prize. So says 2 Grotius ch 3. Sec. 13.

In the first section of the separate article of the treaty with Sweden, the 5th article of the treaty with the Netherlands, and the 7th article of the treaty with Prussia, the protection to be extended to each other is expressly stipulated, within the respective jurisdiction of the several countries, and in some one of these 12 miles is made the distance. If this distance is sought for in the laws, cannon shot will be found the rule, this is generally reported to be 3 leagues, and this distance, he said, he believed was mentioned in the commissions to English privateers. If the capture in question is made within the distance, then we are injured, and if any injury is sustained we have a right to vindicate it.

He next turned to the third point he wished to establish,

It is contended, that we have no right to enquire into the validity of the capture; the enquiry, he said, is already instituted, but this enquiry does not interfere with the principles of peace and neutrality which we wish to preserve towards the belligerent powers. We do not want to enquire into the motives of the rupture between them, nor whether the vessel has been captured under every circumstance that will render it valid; but whether it has not been captured upon neutral ground, where our jurisdiction extends, and where we are bound to protect the property of each and every of the belligerent powers.

True the business may be settled by negotiation, but a judicial decision is one of the modes of settlement, it is a convenient mode, courts of admiralty take the law of nations for their guide; a foreigner can enter such a court without fear. 1. Magens 487—490;—2. Woodson 456.

A judicial decision is more conformable to justice, than that which may be obtained by negotiation between executives. The first decides according to well known principles, and gives judgment on the merits of the case abstractedly considered. The executive as often is guided by motives of policy.

He said something further to shew in what a judicial decision in cases of this nature is preferable to one brought about by negotiation. But even suppose them equally good, where then is the impropriety of adopting the first in the present case.

He turned to several authorities to shew that admiralty courts have constantly taken cognizance of cases somewhat similar to the present, when they had the thing or person within their jurisdiction.

3. Bullroade	28
2. Saunders	260
1. Molloy	14-83
Bynkerhook	194
v. Vattel,	14

He cited a case by which it appeared that the Duke of Tuscany had ordered restitution of a vessel in the port of Leghorn.

In all the cases cited the matters had been judged by judiciary courts except in the last case; but then it is to be observed that the Duke of Tuscany is a despotic prince. Bynkerhook expressly says, that where no treaty interferes the court of admiralty of a neutral nation is equal to both parties. Strict justice could indeed be expected sooner from a court of this kind; he cited Bynkerhook 16. 17, to elucidate this point.

Douglas 579 establishes, that a neutral court may have a jurisdiction over prizes, but it is best to bring back the prizes to the port where the captor belongs. Upon the whole he observed, this appeared among law writers a disputed point, whether a neutral admiralty court can condemn prizes. However the question now before the court is not to condemn a prize, but to declare whether this vessel has not been taken upon neutral ground.

It was said, that this capture was no injury to Great Britain, not such an injury as she could call upon us to redress, that the capture of the vessel could only be considered as a natural consequence of the war. He did not see the thing in this light; the vessel took refuge on our coast, in the arms of the United States as it were; it was thenceforth the duty of the Union to protect her, and Great Britain had a right to require it of us.

If it is no violation of the law of nations to have a vessel, which we ought to protect, captured within the limits of our jurisdiction off the coast, why may not a French privateer take an enemy from our port or cut her from our wharves?

Mr. Sergeant answered, that the sovereignty of the nation would undoubtedly interfere and prevent it.

Mr. Rawle concluded by adding an instance from the 2d vol. of Code des Prises a French work, page 887, to shew, that in France an admiralty court had taken cognizance of a prize taken by the American frigate Alliance Capt. Landais.

He closed by hoping that the cause would be suffered to proceed. From the well known spirit of liberty and justice which breathes through all the public acts of France since her revolution he was persuaded, that she would be perfectly satisfied with this equitable mode of settling the business.

Court adjourned to the next morning.  
(To be continued.)

### FROM THE NATIONAL GAZETTE.

### PROBATIONARY ODES.

#### ODE V.

To a TRULY GREAT MAN.

"Iustum et tenacem propositi virum."—HOR.

GEORGE—on thy virtues often have I dwelt,  
And still the theme is grateful to mine ear:  
Thy gold let chemists ten times over melt,  
From dross and base alloy they'll find it clear.

Yet thou'rt a man—although, perhaps, the first;  
But man, at best, is but a being frail;  
And since with error human nature's curst,  
I marvel not that thou should'st sometimes fail.

That thou hast long, and nobly serv'd the state,  
The nation owns, and freely gives thee thanks:  
But, Sir!—whatever speculators prate,  
She gave thee not the power to establish BANKS.

No doubt, thou thought'st it was a phoenix-nest  
Which Congress were so busy to build up.  
But there a crocodile had fix'd his rest,  
And snapp'd the nation's bowels at a sup.

The greedy monster is not yet half cloy'd,  
Nor will he, whilst a leg or arm remains;  
These parts the last of all should be destroy'd;  
The next delicious morsel is her brains.

I trust thou'lt see the monster by this time,  
And hast prepar'd thy knife to cut his throat;  
His scales are so dem'd hard, that in thy prime,  
'T would take thee twenty years to make it out.

God grant thee life to do it! Fare thee well!  
Another time examine well the nest.  
Though of Arabia's spices it should smell,  
It may produce some foul infernal pest.

### FOR THE GAZETTE.

### PARODY.

GEORGE—at thy virtues often have I smelt,  
But ah, the fragrance did offend my nose;  
For I've to large in things unav'ry dealt,  
That nothing is so nauseous as a nose!

"Thou art a man"—some say thou art the first—  
"But man, at best, is but a being frail;"  
And oh my being surely is accurst,  
So long as thou'rt the head, and I the tail.

"That thou hast long and nobly serv'd the state,  
The nation owns"—so fervid flatterers say—  
But when thou heard'st the little Atlas prate,  
His artful words swept all thy fame away.

The Constitution, w did all furnish,  
Gave not the power to form a banking scheme;  
The speculators took thee by surprise!  
And all thy glories vanish'd like a dream.

Thou that'rt 'twould prove a most prolific goose,  
Whose nest with many golden eggs would teem;

Alas, for me it only finds the muse,  
In empty shell—an empty, bootless theme—

Alas, for me there was nor gold, nor scrip,  
Poets, I found, must have us all pursue;  
In doleful ditties hence my pen I'd slip,  
And damn and blast the speculating crew.

I trust that time hath open'd wide thine eyes,  
Hath shewn the horrid monster's scaly coat,  
And that thou hast a knife of proper size,  
To pierce the scales, and eke to cut his throat.

God grant me life to see the happy time,  
When this—with every other federal plan—  
However honest, noble, just, sublime,  
May all be crush'd beneath "the Rights of Man."

### For the GAZETTE of the UNITED STATES.

MR. FENNO,

WHAT a scheme of mischief is a bank, under the charter of Congress! muni-ed men will make use of the powers of a corporation not to make profit but to propagate certain dangerous political opinions. One might indeed have expected that the love of money would have swayed them. But, alas! we know on the authority of the writers against the bank law, that they are, as a body, more cunning and ambitious thanavaricious.\* They prove that this is the very nature of a bank, and every true republican has been warned of the wicked designs of a body which could be persuaded to pass, and of a chief ma-

\* Late discoveries however shew that "the nation's bowels" have been devoured, and its "legs, arms" and "brains" will go next.

gistrate who could be hoodwinked to approve such a law giving a monstrous monopoly, encouraging speculation, overthrowing the habits of frugality and industry, raising up nabobs, and poisoning the fountain head of republican virtue and equality. Alas, this mischief is without cure, for the very patriots promote State banks. They tell us Congress betrayed the nation, because they got for us from the national bank only the trifling clear sum of sixty thousand dollars a year—and the State banks are set up, now to make what they can, and to keep all they make. Congress, take heed to your ways, for we are blind and deaf to the doings of the State Legislatures—and we are determined that if you should do as we would have you we will change our minds and find fault still.

P. F. for himself and Co.

† Unless the President takes Simbat's advice, by cutting the throat of this "greedy monster"—A truly republican idea this! See one of Jonathan—alias Simbat's Odes—in which the President is addressed as "a truly great man"—till he blasted all his laurels by violating the Constitution in signing the act for incorporating the subscribers to the bank of the United States.

### THE ADDRESS OF THE BALTIMORE MECHANICAL SOCIETY, To GEORGE WASHINGTON, PRESIDENT of the UNITED STATES.

SIR,

HAVING our hopes and expectations principally fixed on the National Government for protection and encouragement in our various pursuits, and being sensible that our happiness and prosperity, in a great measure, depends on the continuance of peace, and our being in a state of amity with the European nations now engaged in war, we beg leave, in addition to what others of our fellow citizens of this town have presented, to express the high sense we entertain of the wisdom and goodness which dictated your late declaration, of the disposition of the government to observe a strict neutrality towards the belligerent powers, who are now desolating the finest countries of Europe. Our country lately experienced all the miseries of a desolating and cruel war, but by the interposition of a kind Providence, the Americans were enabled, under your wise direction and patriotic exertions during their arduous struggle, to secure the invaluable blessings they now enjoy.—Being thus exalted to the possession of civil and religious liberty, and enjoying the benefits of a free and equal government, we cannot divest ourselves of sympathy for all who struggle for the same blessings. But the miseries of war we deprecate, and circumstanced as our country and government are, the generous French will acquiesce with the American citizens in the acknowledgment of that political truth which you have wisely enjoined, "That the duty and interest of the United States require that we should with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers."—This conduct we do for ourselves adopt and mean to pursue, and we are persuaded it will be the conduct of all our good and virtuous citizens.—Peace will be thus preserved, the true interest of our country promoted, happiness extended, and an asylum secured to the oppressed of every nation and country.

Baltimore, June 4th, 1793.

### THE ANSWER.

To the BALTIMORE MECHANICAL SOCIETY,

GENTLEMEN,

THE language of your address shews that you have rightly estimated the purposes for which our general government was established—and so evident are the benefits resulting to the industrious citizens of every description throughout the United States, from the operation of equal laws, and from the security and tranquility with which they have pursued their various avocations, under a government of their own choice, that it becomes the duty of those who are entrusted with the management of their public affairs, to endeavor, by all proper means, to continue and promote those invaluable blessings: And that the happiness and true interest of a people are best secured by observing such a line of conduct as will, while they discharge their political obligations, preserve to their country peace with other nations, and cultivate the good will of mankind towards them, I trust no one will deny. If the citizens of the United States have obtained the character of an enlightened and liberal people, they will prove that they deserve it, by shewing themselves to be the true friends of mankind, and making their country not only an asylum for the oppressed of every nation, but a desirable residence for the virtuous and industrious of every country.

G. WASHINGTON.